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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SANDRA G. GRESHAM,

Plaintiff,

vs.

PETRO STOPPING CENTERS, LP et al.,

Defendants.

3:09-cv-00034-RCJ-VPC

**ORDER**

This case arises out of a slip-and-fall incident at a truck wash. Pending before the Court are two motions in limine. For the reasons given herein, the Court grants the motions in part and denies them in part.

**I. FACTS AND PROCEDURAL HISTORY**

On September 6, 2006, Plaintiff Sandra G. Gresham slipped and fell on Defendant Petro Stopping Centers, LP's ("Petro") property at 1950 E. Greg St. in Sparks, Nevada and suffered a compound fracture of her left femur. (Compl. ¶¶ 5-7). On 28 August, 2008, Plaintiff sued Petro and its general partner, TCA PSC GP LLC, in state court for negligence on a respondeat superior theory. (*See id.* ¶¶ 3, 9). Defendants removed. The Court has denied Defendants' motion for summary judgment. (*See Order*, Aug. 3, 2010, ECF No. 52). Defendants have filed two motions in limine.

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## II. LEGAL STANDARDS

A motion in limine is a procedural device to obtain an early and preliminary ruling on the admissibility of evidence. Black's Law Dictionary defines it as "[a] pretrial request that certain inadmissible evidence not be referred to or offered at trial. Typically, a party makes this motion when it believes that mere mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction to disregard." *Black's Law Dictionary* 1109 (9th ed. 2009). Although the Federal Rules of Evidence do not explicitly authorize a motion in limine, the Supreme Court has held that trial judges are authorized to rule on motions in limine pursuant to their authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984).

A motion in limine is a request for the court's guidance concerning an evidentiary question. *See Wilson v. Williams*, 182 F.3d 562, 570 (7th Cir. 1999). Judges have broad discretion when ruling on motions in limine. *See Jenkins v. Chrysler Motors Corp.*, 316 F.3d 663, 664 (7th Cir. 2002). However, a motion in limine should not be used to resolve factual disputes or weigh evidence. *See C&E Servs., Inc. v. Ashland, Inc.*, 539 F. Supp. 2d 316, 323 (D.D.C. 2008). To exclude evidence on a motion in limine "the evidence must be inadmissible on all potential grounds." *E.g., Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004). "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context." *Hawthorne Partners v. AT&T Tech., Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993). This is because although rulings on motions in limine may save "time, costs, effort and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence." *Wilkins v. Kmart Corp.*, 487 F. Supp. 2d 1216, 1219 (D. Kan. 2007).

In limine rulings are provisional. Such "rulings are not binding on the trial judge [who] may always change his mind during the course of a trial." *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000); *accord Luce*, 469 U.S. at 41 (noting that in limine rulings are always subject to

1 change, especially if the evidence unfolds in an unanticipated manner). "Denial of a motion in  
2 limine does not necessarily mean that all evidence contemplated by the motion will be admitted  
3 to trial. Denial merely means that without the context of trial, the court is unable to determine  
4 whether the evidence in question should be excluded." *Ind. Ins. Co.*, 326 F. Supp. 2d at 846.

### 5 **III. ANALYSIS**

#### 6 **A. First Motion in Limine (ECF No. 54)**

7 Defendants make eleven evidentiary requests. Several of the requests, however, identify  
8 no particular piece of evidence to exclude, but simply remind the Court of certain rules of  
9 evidence or ask the Court to prohibit certain kinds of argumentation generally.

##### 10 **1. Nonspecific Requests**

11 Defendants ask the Court to exclude evidence not timely disclosed, but they do not  
12 identify any particular piece of undisclosed evidence they think Plaintiff will attempt to adduce.  
13 They also ask the Court to exclude evidence of other accidents at the property without a  
14 foundation showing that the accidents were similar to the accident in this case. The Court does  
15 not have enough information to make such a ruling at this time. They also ask the Court to  
16 exclude argumentation inviting the jury to put themselves in Plaintiff's shoes, argumentation  
17 expressing an opinion as to the justness of the Plaintiff's cause, argumentation alluding to  
18 counsel's personal knowledge of facts not in evidence, and appeals to sympathy or bias. Such  
19 comments would indeed be improper, but these requests are not appropriate for in limine rulings  
20 because there is no particular piece of evidence identified and no improper argument that has yet  
21 been made. "Exclusion" of such arguments at this stage would merely be a recitation of the  
22 rules, not an application of them. Several of the requests, however, are specific enough that the  
23 Court can rule on them.

##### 24 **2. Wealth of the Parties**

25 Defendants ask the Court to exclude evidence or argumentation concerning the poverty

1 or wealth of the parties. The Court grants this request in part, because such evidence is  
2 irrelevant to fault or causation. *See* Fed. R. Evid. 401–402. However, evidence of Plaintiff’s  
3 financial condition will not be excluded insofar as it is relevant to damages, i.e., lost wages,  
4 medical bills, etc. And, as Plaintiff notes in response, evidence that is admissible for other  
5 purposes need not be redacted to avoid any mention of the fact that Petro is a nationwide chain.

### 6           **3. Insurance**

7           Defendants ask the Court to exclude evidence of their liability insurance. Such evidence  
8 is excluded unless introduced to show ownership or control of the premises, and only if  
9 Defendants dispute those issues at trial. *See* Fed. R. Evid. 411.

### 10           **4. Voir Dire Concerning Propensity to Return a Large Verdict**

11           Defendants ask the Court to prohibit Plaintiff’s counsel from questioning the venire about  
12 what size verdict they would be comfortable returning. Plaintiff agrees in response that it would  
13 be improper to attempt to obtain a pledge from a prospective juror to return a large verdict or to  
14 refer to verdicts returned in other cases, but Plaintiff also argues that the parties are entitled to  
15 question jurors as to their bias, including a potential juror’s unconditional refusal to return a  
16 large verdict even if supported by the facts and the law. Plaintiff is correct. The Court denies  
17 this request. Plaintiff may ask questions to ascertain if any potential jurors would refuse to give  
18 a large verdict even if the facts and law supported it, just as Defendants may ask questions to  
19 ascertain if any potential jurors would refuse to return a verdict for the defense even if the facts  
20 and law supported it.

### 21           **5. Settlement Negotiations**

22           Defendants ask the Court to exclude evidence of communications made during settlement  
23 negotiations. Such evidence must be excluded in a civil case unless offered to show bias or  
24 prejudice or to rebut a claim of undue delay. *See* Fed. R. Evid. 408. However, as Plaintiff  
25 notes in response, otherwise admissible evidence does not become inadmissible simply because

1 it is also discussed during settlement negotiations, just as otherwise admissible evidence does not  
2 become inadmissible under the privilege rules simply because an attorney also has the  
3 information in his notes. Again, however, Defendants identify no particular statements to  
4 exclude.

#### 5       6.       Slip-and-Fall Expert Testimony

6       Defendants ask the Court to exclude the testimony of Plaintiff's expert witness Brian K.  
7 Jones as to the cause or mechanism of the alleged fall.<sup>1</sup> Defendants argue that Jones is  
8 unqualified to give his opinion as to the cause of a fall and that he has not shown that his  
9 findings are based on sound scientific methods under *Daubert*. The Court grants this request in  
10 part.

11       Jones is clearly qualified to testify as an expert concerning the mechanics and physical  
12 causes of a fall. He has a bachelor of science degree in mechanical engineering, a master of  
13 science degree in biomedical engineering, specializing in biomechanics and human factors, is a  
14 licensed professional engineer in Nevada, is certified by the International Safety Academy as  
15 proficient in wet and dry slip testing and the analysis of pedestrian slip-and-fall incidents, and  
16 has worked for approximately sixteen years in the field of accident reconstruction, including  
17 slip-and-fall incidents. A more qualified expert on the subject of the mechanics of slip-and-fall  
18 accidents could hardly be found. There are two potential problems with Jones' proffered  
19 testimony, however.

20       First, Jones appears prepared to testify not only about the mechanics of slip-and-fall  
21 incidents generally and the mechanical causes of the present incident based on the testimony of  
22 witnesses and his own tests, but also about the legal issue of fault. In fact, his Causation and  
23 Culpability Analysis ("CCA"), as the title implies, focuses largely on his perception of fault.

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25       <sup>1</sup>Defendants ask the Court to exclude testimony of "civil engineering experts," and Jones  
is the expert who most closely fits this description, as his degree is in mechanical engineering.

1 (See CCA, ECF No. 54-4, at 26). Jones is not an expert on the legal issue of fault, but on the  
2 scientific issues of Newtonian physics, friction, human biomechanics, and the like. He will be  
3 permitted to testify only as to his opinions on these scientific issues as they are relevant to  
4 causation. In other words, he may answer questions such as: "Was this fall caused by the  
5 presence of water, oils, and soaps on the concrete?" But he will not be permitted to answer  
6 questions such as: "Was this fall caused because Defendants failed to maintain reasonably safe  
7 premises?" Jones' report is largely focused on answering the latter question. His testimony will  
8 be restricted to the scientific issues about which he is an expert, i.e., the causation element of a  
9 negligence claim, but not the duty, breach, or damages elements, as he is not an expert in these  
10 areas.

11 Second, even insofar as Jones is an expert on the mechanics of slip-and-fall accidents, his  
12 report does not describe his methods. He cites only "Coefficient of friction tests results" and  
13 "Site observations and tests results." (See *id.* 2). The Court may question Jones as to what these  
14 tests entailed in order to ensure that his methods are scientifically sound under *Daubert*.

15 Finally, Defendants identify another of Plaintiff's experts, Jon P. Moldestad. (See  
16 Moldestad Resume, ECF No. 54-4, at 29). Moldestad's expertise is in safety. He has a bachelor  
17 of arts degree in psychophysics and psychometrics, which are fields of psychology. He has a  
18 master of science degree in safety science, however. His qualifications seem to concern safety  
19 policies, but nothing expressly scientific. He appears to have no scientific training. Of course,  
20 expert opinion need not be based on scientific expertise; it may also be based on "specialized  
21 knowledge." Fed. R. Evid. 702. Moldestad has a masters degree in safety science and some kind  
22 of post-graduate training in accident investigation and analysis. He is therefore probably  
23 qualified to testify as a safety expert about the likely cause(s) of Plaintiff's fall based on  
24 information he has surrounding the incident. Plaintiff responds that Moldestad's report indicates  
25 his method was a "fault-tree analysis," which is a widely used method developed by the United

1 States government for accident investigation. No party appears to have attached a copy of  
2 Moldestad's report, however. Subject to voir dire, the Court will admit him as an expert as to  
3 the cause of the fall and safety standards in the industry, but not as to the issue of negligence  
4 directly.

5 **B. Second Motion in Limine (ECF No. 59)**

6 Defendants ask the Court to exclude reference to the immigration status of their witness  
7 Jesus Hernandez. Defendants argue that Hernandez's alleged illegal immigration status is not  
8 relevant. They also argue that Hernandez in fact has a permanent resident card (a "green card")  
9 despite his admission at his deposition that he had been living and working illegally in the  
10 United States. It is possible that he only recently obtained a green card and had been in the  
11 United States illegally prior to receiving it. In any case, the facts are in dispute.

12 Specific instances of conduct may be inquired into on cross-examination at the discretion  
13 of the Court if probative of truthfulness. *See* Fed. R. Evid. 608(b). The First, Second, and Eighth  
14 Circuits have found that unlawful entry or violation of immigration laws are relevant to  
15 truthfulness where there is some evidence that the violations involved dishonesty. *See United*  
16 *States v. Almeida-Perez*, 549 F.3d 1162, 1174 (8th Cir. 2008) (citing *United States v. Cardales*,  
17 168 F.3d 548, 557 (1st Cir. 1999); *United States v. Cambindo Valencia*, 609 F.2d 603, 633-34  
18 (2d Cir. 1979)). Plaintiff will be allowed on cross-examination to question Hernandez about  
19 false statements made to immigration officers or other authorities, the use of a false social  
20 security number, etc., so long as Plaintiff has a good-faith basis for asking the question, but  
21 Plaintiff will not be permitted under Rule 608(b) to impeach Hernandez with the bare fact of his  
22 alleged illegal status. If Hernandez denies a given allegation of dishonest behavior, Plaintiff may  
23 not attempt to prove it directly with extrinsic evidence, *see* Fed. R. Evid. 608(b), although  
24 Plaintiff may then introduce evidence of any prior inconsistent testimony to impeach  
25 Hernandez's credibility generally if he is given an opportunity to explain any discrepancy, *see*

1 Fed. R. Evid. 613(b), 801(d)(1).

2 Plaintiff also argues that Hernandez's alleged illegal status is directly relevant to bias,  
3 because if he does not testify as Petro wishes, Petro might fire him or even report him to the  
4 immigration authorities, and Hernandez would have no recourse. Defendant argues that under  
5 Rule 403, the Court should find that such impeachment would be substantially more prejudicial  
6 than probative due to the emotional nature of the illegal immigration issue. The Court does not  
7 intend to permit impeachment of Hernandez based on his bare immigration status.


8 The Court emphasizes that the rulings it makes in this order are provisional.

9 **CONCLUSION**

10 IT IS HEREBY ORDERED that the Motions in Limine (ECF Nos. 54, 59) are  
11 GRANTED in part and DENIED in part.

12 IT IS SO ORDERED.

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14 Dated this 18th day of March, 2011.

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16 ROBERT C. JONES  
17 United States District Judge  
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